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5 **IN THE UNITED STATES DISTRICT COURT**
6 **FOR THE DISTRICT OF ARIZONA**
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8 Kashane Kirk, as personal representative and
9 on behalf of the estate of Leontae Kirk,
10 Sharon Roberts, Brittnie Turner, as legal
guardian and parent of her minor child on
behalf of M.C.,

11 Plaintiffs,

12 v.

13 City of Phoenix, et al.,

14 Defendants.
15

No. CV 23-00836 PHX MTL (CDB)
PROTECTIVE ORDER

16 The parties have stipulated that discovery in this matter will involve the disclosure
17 of confidential information and they have agreed agreed to the terms of the following
18 protective order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure.

19 Accordingly,

20 **IT IS ORDERED that** the stipulated motion at ECF No. 84 is **granted** and the
21 production and use of documents and information produced in this matter shall proceed in
22 accordance with the following terms:

23 1. Scope of Order. This Protective Order shall be applicable to and govern all
24 depositions (including exhibits); documents produced in response to discovery requests,
25 formal or otherwise, or related to initial disclosures; answers to interrogatories; responses
26 to requests for admissions; and all other discovery taken; submissions to the Court;
27 testimony given at trial or during a hearing; all documents, received by any party, from a
28 healthcare provider; and other materials or information produced in this matter (the

1 “PRODUCED” information). This Protective Order also shall be applicable to certain
2 privileged information, as discussed below.

3 2. “Confidential” Information. “CONFIDENTIAL” information is information that
4 is: (a) confidential, sensitive, competitive, or potentially invasive of an individual’s privacy
5 interests; (b) not generally known; and (c) not normally revealed to the public or third
6 parties or, if disclosed to third parties, would require such third parties to maintain the
7 information in confidence.

8 3. Marking of “CONFIDENTIAL” Information. The designation of information as
9 CONFIDENTIAL will be made by placing or affixing on each page of the document or
10 other material (in a manner that will not interfere with its legibility), the word
11 “CONFIDENTIAL.” All records, received by any party, from a healthcare provider shall
12 be treated as “CONFIDENTIAL” regardless of whether such records are affixed with a
13 “CONFIDENTIAL” designation.

14 4. No Marking at Inspection. When files and records are produced for inspection,
15 no marking need be made in advance of the inspection. For purposes of this initial
16 inspection, all documents in any produced files shall be considered marked as
17 “CONFIDENTIAL” information. Thereafter, upon selection of specified documents for
18 copying by the inspecting party, the producing party shall mark the copies of such
19 documents with the appropriate confidentiality marking at the time that the copies are
20 produced to the inspecting party.

21 5. Deposition Testimony. A deposition transcript may be designated as containing
22 “CONFIDENTIAL” information by so notifying the other parties on the record at the time
23 of the testimony, or by notifying the other parties in writing within thirty (30) business days
24 after the transcript has been officially transcribed of the specific pages and lines of the
25 transcript that contain such information. Such written notification shall specify the
26 designation by page and line number. In the absence of any written notice concerning the
27 specific portions of the transcript that a party believes contains “CONFIDENTIAL”
28 information, the transcript of the deposition testimony shall be treated as designated on the

1 record at the time of testimony, or if no designation was made, then the transcript of
2 testimony shall not be treated as a “CONFIDENTIAL” document under the terms of this
3 Protective Order. Unless otherwise agreed to by the parties in writing or on the record, an
4 individual not qualified to receive “CONFIDENTIAL” information shall not be in
5 attendance at the portion of the deposition during which “CONFIDENTIAL” information
6 is being disclosed.

7 6. Effect of Designation. The designation of information as “CONFIDENTIAL”
8 shall constitute a representation that the attorney believes that there is a valid basis for such
9 designation. All rights are retained regarding the inadvertent failure of a party or other
10 person to designate a document or other material as “CONFIDENTIAL” information. The
11 parties reserve their respective rights to argue the impact of designating or failing to
12 designate a document or other material as “CONFIDENTIAL” information at trial.

13 7. Limited Access to “CONFIDENTIAL” Information. Except for counsel to the
14 parties to this litigation, counsels’ employees, employees of outside copy services used to
15 make copies of “CONFIDENTIAL” information, couriers, court personnel, the jury, and
16 court reporters, access to “CONFIDENTIAL” information shall be limited to:

17 a. Parties, and their officers, directors, or employees who are assisting in the
18 preparation of, or making decisions with respect to, the conduct of this litigation;

19 b. Experts and consultants who are employed, retained or otherwise consulted by
20 counsel of record for the parties for the purpose of analyzing data, conducting studies or
21 providing opinions to assist in this litigation; and

22 c. Persons identified on the face of a document as authors or recipients, or persons
23 called to testify as witnesses (either at a deposition, a hearing, or at trial) who are believed
24 to possess information relating to the “CONFIDENTIAL” information that is deemed
25 necessary for the prosecution or defense of this litigation.

26 8. Access Requirements. Disclosure of “CONFIDENTIAL” information is
27 prohibited except to the extent permitted by this Protective Order. Any person given access
28 to “CONFIDENTIAL” information is subject to this Protective Order. Each such person

1 shall be advised in advance that such “CONFIDENTIAL” information is being provided
2 subject to the terms of this Protective Order. Each person given access to
3 “CONFIDENTIAL” information pursuant to paragraph 7(b), above, must first agree to be
4 subject to the provisions of this Protective Order by signing a copy of the Acknowledgment
5 of Stipulated Qualified Protective Order.

6 9. Filing and Use of CONFIDENTIAL Information in Court. The parties shall
7 comply with Rule 5.6 of the Local Rules of Civil Procedure when filing Confidential
8 Information under seal. Confidential Information shall not be filed with the Court except
9 when required in connection with matters pending before the Court. Said Confidential
10 Information shall be kept under seal until further order of the Court; however, Confidential
11 Information and other papers filed under seal shall be available to the Court, to counsel of
12 record, and to all other persons entitled to receive the confidential information contained
13 therein under the terms of this Order.

14 **Nothing in this order shall be construed as automatically permitting a party to**
15 **file under seal. Before any party files any document under seal such party shall seek**
16 **leave of Court and shall show “compelling reasons” (dispositive motion) or “good**
17 **cause” (nondispositive motion) for filing under seal. *See Kamakana v. City & Cnty. of***
18 ***Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006). Additionally, such party seeking to**
19 **file under seal shall, within the applicable deadline, file a redacted, unsealed version**
20 **of any motion, response, or reply if such party is waiting for a ruling from the Court**
21 **on filing an unredacted, sealed version of the same document. Further, no portion of**
22 **the trial of the matter shall be conducted under seal.**

23 10. Use of Independently Obtained or the Party’s Own Information. This Protective
24 Order shall not impose any restrictions on the use or disclosure by a party of information
25 or material properly obtained or developed by such party independently of discovery in
26 this matter, whether or not such information or material is also obtained through discovery
27 in this matter.
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1 Nothing in this Protective Order shall impose any restrictions on the use or
2 disclosure by a party of its own “PRODUCED” and/or “CONFIDENTIAL” information
3 as that party deems appropriate.

4 11. Inadvertent Failure to Designate. In the event that a party or other person
5 inadvertently fails to designate a document or other material as “CONFIDENTIAL”
6 information, the party to whom the document or other material was produced, upon written
7 notice, will designate and treat such document or other material as “CONFIDENTIAL”
8 information from that point forward. The receiving party’s disclosures, prior to the receipt
9 of notice from the producing party of a new designation, of “CONFIDENTIAL”
10 information to unauthorized parties or individuals shall not be deemed a violation of this
11 Protective Order.

12 Additionally, the inadvertent failure of a party or other person to designate a
13 document or other material as “CONFIDENTIAL” information shall not constitute, be
14 construed as, or have the effect of, a waiver of confidentiality.

15 12. Re-Designation of Documents Produced by Non-Parties. If a non-party produces
16 information without any confidentiality designation, a party has the right to change such
17 designation to the extent the non-designated information at issue contains information that
18 the party in good faith deems “CONFIDENTIAL” to that party. Any redesignation by a
19 party will be given full effect of protection under this Protective Order.

20 13. Disclosure of “PRODUCED” and/or “CONFIDENTIAL” Information in Other
21 Actions. In the event that any recipient of “PRODUCED” and/or “CONFIDENTIAL”
22 information subject to this Protective Order is (a) subpoenaed in another action or (b)
23 served with a demand in another action to which such individual is a party or a witness,
24 seeking “PRODUCED” and/or “CONFIDENTIAL” information, that person shall object
25 to its production setting forth the existence of this Protective Order and shall give prompt
26 written notice of such event to counsel of record for the producing party. The producing
27 party shall assume responsibility for preserving and prosecuting any objection to the
28 subpoena or demand. The person served shall be obligated to cooperate to the extent

1 reasonably necessary to preserve the confidentiality of the protected matter until ruled upon
2 by a court of competent jurisdiction. However, nothing in this Protective Order should be
3 construed as requiring the party served to challenge or appeal any order requiring
4 disclosure of “PRODUCED” and/or “CONFIDENTIAL” information, or to subject itself
5 to any penalties for noncompliance with any legal process or order, or to seek any relief
6 from this Court.

7 14. Non-Waiver of Rights. The parties agree that the filing and entry of this
8 Protective Order shall not constitute a waiver of any rights under any applicable law and/or
9 court rules, including, but not limited to, the rights to: (1) object to any discovery request
10 and withhold information and/or materials on the ground of attorney/client privilege, work
11 product or otherwise; (2) object to the introduction of any “PRODUCED” and/or
12 “CONFIDENTIAL” information as evidenced at any hearing or trial in this matter; (3) seek
13 other and further protections as to any “PRODUCED” and/or “CONFIDENTIAL”
14 information that may be offered or admitted as evidence at any hearing or trial in this
15 matter; or (4) file any other motions that may be permitted by any applicable law or court
16 rule. Nothing in this Protective Order shall constitute an admission or waiver of any
17 objection, claim or defense by any party.

18 15. Modifications to Protective Order. Any party may, on motion or other request
19 to the Court, seek a modification of this Protective Order. By its agreement to this
20 Protective Order, no party shall be deemed to have waived the right to seek subsequent
21 modifications.

22 16. Binding Order. All parties to this litigation, regardless of when such party is
23 named or appears, and all persons receiving “CONFIDENTIAL” information produced in
24 this litigation, shall be bound by this Protective Order.

25 17. Dispute Resolution. A party shall not be obligated to challenge the propriety of
26 a confidentiality designation at the time made, and a failure to do so shall not preclude a
27 subsequent challenge. In the event of a dispute with respect to the terms of this Protective
28 Order, including, but not limited to, the designation of documents or other material as

1 “CONFIDENTIAL” information, the attorneys for the parties shall first consult with each
2 other and attempt to negotiate a resolution of the dispute. If the dispute is not resolved, the
3 parties agree to submit the dispute to the Court by way of written motion (consistent with
4 the Court’s discovery dispute resolution procedure), and to be bound by the Court’s
5 resolution of the dispute, including any further protective order that the Court may enter.
6 The producing party shall ultimately have the burden of establishing the need for
7 classification as “CONFIDENTIAL.”

8 18. Survival of Litigation. This Protective Order shall survive the termination of this
9 litigation.

10 Dated this 4th day of April, 2025.

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14 Camille D. Bibles
15 United States Magistrate Judge
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6 **FOR THE DISTRICT OF ARIZONA**
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8 Kashane Kirk, as personal representative and
9 on behalf of the estate of Leontae Kirk,
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No. CV 23-00836 PHX MTL (CDB)

**AGREEMENT TO BE BOUND BY
STIPULATED PROTECTIVE
ORDER PROTECTIVE ORDER**

16 I, _____, declare and say that:

17 1. I am employed as _____ by
18 _____.

19 2. I have read the Protective Order (the “Order”) entered in the above-captioned
20 case and have received a copy of the Order.

21 3. I promise that I will use any and all “Confidential” or “Confidential – For Counsel
22 Only” information, as defined in the Order, given to me only in a manner authorized by the
23 Order, and only to assist Counsel in the litigation of this matter.

24 4. I promise that I will not disclose or discuss such “Confidential” or “Confidential
25 – For Counsel Only” information with anyone other than the persons described in
26 paragraphs 3, 8, and 9 of the Order.

27 5. I acknowledge that, by signing this agreement, I am subjecting myself to the
28 jurisdiction of the District Court of Arizona with respect to the enforcement of the Order.

